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Chair

Mr. Dan Ruimy

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● (1535)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody.

We are—exciting times—at meeting number 101 of the Standing Committee on Industry, Science and Technology. Pursuant to the order of reference of Wednesday, December 13, 2017, and section 92 of the Copyright Act, we'll be doing a statutory review of the act.

Before we get into it, I have a few words to say as my preamble. We are televised today. We thought it would be a good idea for the whole world to see us. You're on stage. It's my genuine pleasure to welcome you all to the Standing Committee on Industry, Science and Technology's first meeting on the statutory review of the Copyright Act. The House of Commons honoured my colleagues and me when it entrusted the statutory review of the act to the industry committee. Given the importance of copyright law in our modern economy and the lively arguments it generates, there's a special responsibility that comes with today's undertaking. This is a responsibility shared among members of this committee and participants to the review.

To all Canadians who care about the issue we will examine, whether you submit a brief, appear as a witness in Ottawa, or meet us elsewhere in Canada,

[*Translation*]

you will be heard. You have our full attention. I make that commitment, as the chair of this committee.

[*English*]

But I ask for something in return. As we embark on what will certainly lead to difficult discussions, please remember that the role of the committee members is to ask all manner of questions to better understand the significance that copyright law has for Canada and its modern economy. Let us not presume the outcome of what will be a lengthy and fairly complex study. Let us always show respect to one another, no matter the different views we may hold on copyright. Let us aspire to a thoughtful and courteous conversation in true Canadian fashion.

Conscious of the critical role our Copyright Act plays in our economy and its effect on the everyday life of Canadians,

[*Translation*]

the members of this committee have spent many hours preparing this review. The committee has decided to conduct the review in three phases.

[*English*]

In phase one, we will hear from witnesses involved in specific industries and sectors such as education, publishing, broadcasting, software, and visual arts. This phase will notably provide the opportunity for stakeholders to share concerns that are unique to these industries and sectors of activity.

In phase two, we will hear from witnesses representing multiple industries and sectors. The committee looks forward to hearing from, among others, indigenous communities and the copyright board during this phase.

Finally, in phase three, we will hear from legal experts. The committee should expect bar associations, academics, and lawyers appearing in their individual capacities to share their insight and knowledge to improve the Copyright Act to the benefit of all Canadians.

The House of Commons expects from this committee that we will review every aspect of the act. We'll leave no stone unturned. You will all be heard. I want to thank you in advance for participating in this nice, long study.

Let's begin. Today we have with us, from Universities Canada, Paul Davidson, president; and also Wendy Therrien, director of research and policy. We have from the Canadian Federation of Students, Charlotte Kiddell, deputy chairperson. This is the first panel.

You have five minutes to present, and we will start with Mr. Davidson.

[*Translation*]

Mr. Paul Davidson (President, Universities Canada): I would like to thank the chair and the members of the committee for inviting me to appear on behalf of Universities Canada.

Our association represents 96 universities in the 10 provinces, whose teaching, learning and research activities extend to the three territories.

[*English*]

With me is Wendy Therrien, director of research for Universities Canada.

Let me just echo the chair's remarks of a moment ago and thank you, on behalf of our members, for undertaking this study. For those who have been on this study before, it is complex, it can be dry, it can be polarized, and it has big impact on the work of students and the work of researchers. Your efforts are vitally important in terms of the more than one million young people studying at Canada's universities today and those who will follow them. Your work is also vitally important to Canada's university researchers, who produce most of the copyrighted educational material used by university students.

The university community brings a balanced perspective to this review, as both owners and users of copyright material. Canada's future will be shaped in large measure by the education students receive today. Fair dealing for education ensures that students across Canada have a diversity of learning materials, educational opportunities, and increased accessibility to post-secondary education.

Digital materials mean that today, more than ever before, young people are equipped to achieve their potential, whether they live in Abbotsford or Attawapiskat, and that helps build a stronger, more prosperous Canada for all. In our rapidly changing world, Canada cannot afford to take a step backward in education. Maintaining fair dealing for education will help ensure Canada's young people continue to have the 21st century education demanded in our changing world.

As mentioned, the vast majority of learning materials used by students today comes from creators on campus, university faculty. University professors are prolific creators in writing books and research papers. One estimate is that academics, not literary authors, produce as much as 92% of the content available in university libraries.

Copyright law needs to balance the interests of copyright owners and the users of copyright material. It should incentivize the creation of new ideas and allow for the dissemination of knowledge. Fair dealing is important for maintaining this balance.

Compliance is also important, and that's why many universities have significantly increased their compliance efforts, with offices staffed by lawyers, librarians, and copyright specialists to advise students, faculty, and staff on the use of copyrighted materials.

Today universities spend more than ever before in purchasing content. According to StatsCan, university library acquisitions in 2016 exceeded $370 million, a figure that has been increasing year over year. In the past three years, universities have spent over $1 billion on library content. Libraries are also changing what they're buying. Our libraries have shifted their primary purchasing from print to digital content. One institution reports that in 2002, only 20% of its acquisitions were digital, but today this number has grown to 80%, and that trend will continue.

It's important for this committee to know that, unlike printed books, the use and reproduction of digital content can be negotiated and contracted. On campus, digital content is usually shared through links and not copies, and is frequently protected by digital locks. Further, Access Copyright's repertoire doesn't cover authors of born-digital works and is restricted to authors of printed material.

Along with digital content, most libraries now have e-reserve systems, making it easier for students to use library content on their personal devices 24-7. These systems are making printed course packs much less common than just a few years ago.

Beyond digital disruption, a series of Supreme Court decisions guides the use of copyright material on campus. Before 2012, the Supreme Court of Canada said fair dealing is a right, and that's significant. In 2012, a series of decisions by the Supreme Court concluded that the right of fair dealing was much broader than how the education sector had been using it up to that point. These judgments were the genesis for the shift in how the education sector has managed copyright.

Since 2012, the courts have continued to expand our understanding of copyright law. A growing body of legal decisions is determining the details of what fair dealing means, and several active court cases are still pending.

I would respectfully submit that Parliament should allow the courts to continue their work before intervening with more legislation.

To conclude, it's true that parts of our cultural industries are struggling to adapt to the digital disruption affecting Canadian society. Canada's universities were pleased to participate in the 2016 review of Canadian cultural policy and to recommend new tools to support the creative economy. But changing fair dealing is not the answer to the challenges facing copyright owners during this period of transition. Changing fair dealing would have a direct impact on the affordability of education for students and the quality of the teaching materials at all levels.

● (1540)

Thank you very much for the opportunity to speak with you today. We wish you well in your deliberations. We welcome any questions you may have today or throughout the consultation process.

The Chair: Thank you very much.

We'll move to Ms. Kiddell from the Canadian Federation of Students.

Ms. Charlotte Kiddell (Deputy Chairperson, Canadian Federation of Students): Thank you. Good afternoon, and thank you for your invitation to present today.

As you said, my name is Charlotte Kiddell, and I am the deputy chairperson of the Canadian Federation of Students. The federation is Canada's largest and oldest national student organization, representing over 650,000 university and college students, including the 90,000 graduate student members of our national graduate caucus. Those in this latter group are themselves educational content creators.

The federation has a mandate to advocate for a system of post-secondary education that is of high quality and is accessible to all of Canada's learners. This includes advocating for our members' ability to access learning materials for the purposes of research and education in a way that is affordable and fair.

Over the last several years, we've seen a shift initiated within the academic community to prioritize learning opportunities that allow for multiple points of access to information. Tired of predatory pricing from large corporate content owners, academics have increasingly opted towards models of providing content directly to the education community. These models include the use of open access journals and open educational resources. In fact, today nearly half of all research publications in Canada are available online for free.

There's another essential facilitator of access to information—the current fair dealing provisions within the Copyright Act. Fair dealing, which has been affirmed by the Supreme Court as a central tenet of copyright law since 2004, allows for the limited use of copyright-protected works, without payment or permission, for the purposes of research and education. Such provisions allow educators to share brief video clips, news articles, or excerpts of a relevant text. Fair dealing has not resulted in the replacement of traditional learning materials. Rather, it allows educators to supplement these materials for a richer, more dynamic learning experience.

The Supreme Court of Canada has repeatedly affirmed the role of copyright law in serving the public good. The ability of students to fairly access an array of research and educational materials is essential to not only the quality of post-secondary education they receive but also their ability to contribute to innovation and development in Canada.

This government demonstrated its commitment to scientific development and innovation with substantial investment in fundamental sciences in budget 2018. We would ask that the government uphold its commitment to research and development by protecting fair dealing.

In recent months, students have heard myths, perpetuated by private publishing stakeholders, that students' advocacy for fair dealing is rooted in an unwillingness to adequately compensate content creators for their work. I wish to address these concerns in case they are shared by members of the committee today.

First, let me affirm that students and their families have paid and continue to pay significant sums for learning materials. According to Statistics Canada, average household spending on textbooks in 2015 was $656 for university texts and $437 for college texts. Indeed, a report on the book publishing industry in 2014 finds educational titles to be one of the top two commercial categories in domestic book sales.

Second, I will acknowledge that students do struggle to afford textbooks. A 2015 British Columbia study found that 54% of students reported not purchasing at least one required textbook because of cost; 27% took fewer courses to lessen textbook costs; and 26% chose not to register for a course because of an expensive textbook. However, these results are hardly due to a desire to keep profits from content creators. When both textbook prices and tuition fees increase each year at rates that far outstrip inflation, students and their families are forced to make difficult decisions on how they afford post-secondary education.

Today the average undergraduate student accumulates $28,000 in public student debt for a four-year degree. A student relying on loans may find that a $200 textbook eats up most of their weekly loan disbursement and thus is put in the impossible position of choosing between course books and groceries.

To conclude, I would like to say that both the Supreme Court decisions and Parliament's passage of the Copyright Modernization Act in 2012 affirmed the wisdom and justice of our current copyright regime, including fair dealing. Canadian copyright law has positioned Canada as a leader in the fair and dynamic exchange of knowledge and ideas. We ask this committee to protect our copyrights in the interest of students and educators, but also of the broader Canadian public. Students have benefited from a good system over the last several years, and are eager to continue working with this government to maintain and strengthen it.

● (1545)

Thank you for your time. I look forward to answering any questions you may have.

The Chair: Thank you very much.

We're going to jump right into questions.

Mr. Longfield, you have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair.

Thank you all for being here. Copyright is a complex topic when it comes to different opinions, depending on whom you're talking to.

Mr. Davidson, you outlined one of the stresses here, the balance between paying content creators for their works and being able to access their works as somebody trying to learn from previous people's publishing. Looking at the online platforms like Cengage, or other platforms available for professors and students to access information, could you talk about how Cengage works within the university platforms?

Mr. Paul Davidson: I can reiterate the university's position in terms of trying to find the balance between the rights of users and the rights of creators of content and rights holders. That's an ongoing challenge that we've had. The decisions over the last few years by the Supreme Court, by Parliament in the 2012 act, have helped clarify the ground considerably.

One of the newer developments in undergraduate teaching and teaching generally has been the use of learning management systems. I'm not directly familiar with the one you spoke about, but again, the learning management systems are a tool that in many ways can reaffirm the rights of rights holders and the rights of users to effectively use the content and make sure that appropriate compensation is given. There's a wide range of capacities in those learning management systems, but it's separate from the issue of copyright directly before us today.

● (1550)

Mr. Lloyd Longfield: Thank you for that.

I had a round table in Guelph, and I had the different stakeholders: the university, the bookstore, the librarians, the researchers, the publishing houses. One of the things that came up from the library was the institutional licensing of course material and the libraries having inflationary costs they have to deal with to keep libraries open. The Guelph library did receive federal funding for an expansion for the physical location, but the operational costs continue to increase.

When it comes to policy around institutional licensing, could you speak to what your members are telling you?

Mr. Paul Davidson: I have a couple of comments there. Again, as the committee embarks on its work, I really invite you to visit campuses across the country to see what a dynamic learning environment there is, how the different factors at play within a university are working with new technology and new pedagogy to ensure that students have an optimum experience, a quality experience.

On the issue of buying content, I want to be clear that universities buy a considerable amount of content each year, over $300 million a year in library acquisitions. That number is large and growing. We're a major customer of the rights holders. There are also a variety of new ways of buying the rights to use content. For many years, Access Copyright was the primary source, but there are other sources now that may be more purpose-built to the needs of students and faculty.

As the committee embarks on its study, we really encourage a detailed look at those different tools and techniques available, because I think many in the university community would say they don't mind paying appropriate amounts for content, but they don't want to have to pay for it three times.

Mr. Lloyd Longfield: Right. Thank you.

Charlotte, the students that I've talked to mentioned finding other ways to get course materials. There was #textbooksbroke, a site that students were using. There are student stores starting up, and campus stores competing with maybe some of the online stores. Back in the 1970s, when I was buying textbooks, you could buy used textbooks in a different way from what they're doing now.

Could you talk about how the students are getting creative? You mentioned it in the presentation, but how are students getting access to information that they need for their studies?

Ms. Charlotte Kiddell: I certainly acknowledge that students are increasingly struggling to afford all aspects of post-secondary education. That includes textbooks. When students are put in a position where tuition fees are increasing at exponential rates every single year, they're certainly having to make difficult choices. But I think to pin any decline in income for content creators on students is a false characterization.

For one, students are spending significant sums on university textbooks, over $600 in average annual household family spending. Moreover, adequate funding for arts and for writers is not mutually exclusive from fair dealing. We certainly support that; just not on the backs of students. The other mechanisms I talked about, open educational resources and open access journals, are mechanisms for more dynamic exchanges of information among the educational community, but certainly not at the expense of content creators; rather, they're championed by many content creators within the academic community.

Mr. Lloyd Longfield: Thank you both for your time.

The Chair: Thank you very much.

We're going to jump to Mr. Jeneroux for five minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Great. Thank you, Mr. Chair

Thank you for being here. It's wonderful to kick off this study, which sounds like it will be a long one, with both of your organizations here before us.

I do quickly want to ask a question with regard to something that was done back in early 2015 by one of my predecessors, Minister Holder, when he announced the tri-council granting agency's open access policy.

Mr. Davidson, I'd like to get your assessment of that policy, which stipulates that reports from grant-funded research must be made freely available to the public within 12 months after publishing.

● (1555)

Mr. Paul Davidson: We're already into a great conversation today, because we're seeing the dynamics of a shifting landscape. The initiative of the previous government to ensure that publicly funded research would be publicly available has been a useful development. It has been one that our members watch with great interest. It has been one that I know students and graduate researchers benefit from, and it does address one of the questions of both content creation and accessibility of the research that has been done.

Mr. Matt Jeneroux: Could that expand to other areas? It's within the granting councils. Do you see a benefit of that expanding?

Mr. Paul Davidson: The open access publishing development is, as I say, a very rapidly evolving landscape internationally. The academic community is watching it around the world. It is an effort, to pick up on an earlier point, to try to mitigate the exorbitant, excessive costs that publishers can derive from their academic journals, from their academic publications.

I would hope in the course of this study the committee would look at the changing nature of academic publishing in the world, the concentration of ownership, and the impacts that has on the ability of people to access information that has been publicly funded.

Mr. Matt Jeneroux: Great.

I'm shifting gears a bit in the limited time I have. I'd like to get your assessments, Charlotte and Paul, on the amount of time it takes the Copyright Board to conclude its cases. I'll leave it at that, kind of open-ended on the Copyright Board in general.

Ms. Charlotte Kiddell: You go ahead.

Mr. Paul Davidson: Okay.

A number of people, even around this table, have been around copyright issues for a very long time, and I think you will find unanimity as you tour the country on the importance of reform of the Copyright Board, for it to be able to come to timely decisions. That's the key issue. We were pleased to participate in the Government of Canada's consultation on this. We are expecting those deliberations to conclude shortly.

One of the big challenges in this whole terrain is providing certainty to all the players. As the Copyright Board for many years was under-staffed, for many years was not fully constituted, its ability to absorb and carry out its proceedings was really compromised by that. A more robust Copyright Board could be part of the solution to resolving some of these challenges so they're not always before Parliament.

Ms. Charlotte Kiddell: As I was saying, among our recognition of what is a strong system of copyright right now, there are obviously opportunities to strengthen copyright law. An area of particular interest for students and academics is copyright law as interrelating to indigenous knowledge and indigenous ownership of information. I think some robust consideration is really warranted, and there are opportunities to make what is already a strong piece of legislation stronger.

Mr. Matt Jeneroux: Do you have anything specific to add on the Copyright Board? No? Okay.

All right, Chair. I'm good.

The Chair: You still have 30 seconds.

Mr. Matt Jeneroux: No, I'm good.

The Chair: All right.

Mr. Masse, you have five minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for being here.

One of the things we can't miss, especially in the academic sector, is that students are the ultimate customer. When you think about it, they will be the ones who incur personal debt or personal expense by large financial contributions for their tuition, the materials, and the lifestyle required to spend that much time on education.

They will also incur provincial debt, because most provinces are in a deficit right now. They will be responsible for retiring that debt, so that will be incurred by them.

They will also actually secure a participation rate in a federal debt, as we are federally indebted, and they will again have to pay for the allocations and programs that are assigned over the different budgets.

Lastly, they'll also have to incur the costs of those provincial and federal governments of any private sector incentives that are provided for because we are in debt. Reductions in taxes, SR and ED tax credits, and other types of incentives are all borrowing costs that they will then have to pay back.

So when we're looking at fair dealing here, one of the things that hasn't been solved is the fair dealing of students and what they're actually contributing to the greater Canadian economy. Hence, hopefully when we see something come out of this, there will be some type of recognition that they are probably one of the single largest customers who are still not receiving probably the reciprocity they deserve.

With that, the public funding and sharing of information with regard to the grants that are provided for those things have been noted. I believe there's probably some necessity for private sector participation. If you were a benefactor of public funds from the private sector, should there perhaps be some sharing agreements, given the fact that it could be the research and development grants that are provided? It could be, again, tax reductions or abeyance, or government programs where they receive research, and not only that but also staffing components through some of the job creation programs that are out there. Is there perhaps a role in the private sector to actually share when they receive some money from the public purse?

● (1600)

Ms. Charlotte Kiddell: Could you clarify the last part of your question?

Mr. Brian Masse: In your opinion, is there a responsibility for the private sector to share some of their materials and information and product, at the end of the day, if there's a public contribution to a private entity? For example, it could be software, it could be some type of innovation, it could be through the arts community, it could be whatever, where there's a financial contribution of some sort to the individual, to the private profits, that comes from public funds.

Ms. Charlotte Kiddell: A trend that has long concerned students, particularly the graduate student members of the Canadian Federation of Students, is this issue of earmarking public funding for private sector interests. I'm hopeful that we are seeing a shift away from that in terms of reinvestment in basic investigative research, as we saw in the most recent budget. However, certainly when public money is being spent on research and development, I think it is critical, as Mr. Davidson affirmed, that this research and development remain publicly accessible and within the public interest, yes.

Mr. Brian Masse: Mr. Davidson.

Mr. Paul Davidson: I'll pick up on the most recent budget and the transformative investments that have been made through the granting councils. That's a really important new set of developments that the university community really strongly welcomes.

I was also thinking, as you were speaking, about the investments that are being made around cluster strategy.

Mr. Brian Masse: That's a good example.

Mr. Paul Davidson: One of the really compelling impacts of that investment is that it is bringing private sector and public sector, and students as well—young researchers—into a collaborative enterprise, to accelerate the exchange of information and ideas for the benefit of Canada's economy. There are places where we're seeing that happening already. As I say, as you go through several weeks and months of hearings, you will hear about an economy that's in digital transition, what the impacts of that are, and how to make sure the core mission of delivering high-quality education to students is preserved.

I'm struck already in the conversation about how different the undergraduate experience is today from 20 or 30 years ago. Look at the development of e-reserves, for example, whereby students can access their required readings 24-7, copyright cleared for appropriate use, from their devices at home. As you're having this wide-ranging conversation, just keep in mind the dramatic shifts over the last 20 years and the opportunities they present for really thoughtful public policy.

The Chair: Thank you very much.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much to our presenters for starting off our copyright study. It's the 101st meeting, so this is Copyright 101, I guess, right away.

Paul, your organization, Universities Canada, has made strong statements about the importance of an indigenous education as it relates to truth and reconciliation. You made it a priority. You recognized the barriers that Canada's indigenous people face—first nations, Métis, Inuit—as it relates to getting a university education. In my riding, we have Algoma University, which is a member of Universities Canada, and it underwent a significant transition. It was a former residential school, and it's now a university. The federal government has just recently invested in the university to maintain its infrastructure and also the new Anishinabek Discovery Centre, a $10.2-million project that is going to house the chiefs' libraries—the artifacts, the teachings, a whole bunch of things. They're undergoing that process. The infrastructure is going up. What Chief Shingwauk wanted was a teaching wigwam.

We know that there have been concerns for quite a while from indigenous people about copyright. How could we help indigenous people better protect their traditional knowledge and culture expressions?

● (1605)

Mr. Paul Davidson: Thank you very much for the question, and thanks for recognizing the work that Canada's universities have been involved in now for close to a decade on improving indigenous access and success, engaging meaningfully in collaborative research, and ensuring that we're engaged in the process of reconciliation coming out of the recommendations of the TRC. As it happens, just this week we're reporting to our members and to all Canadians some of the progress we've made in recent years on these files.

Really, one of the big items ahead for all of us to consider is the question of indigenous knowledge, how it is appropriately recognized academically, how it is appropriately recognized in society, and what the rights are around that indigenous knowledge, beyond copyright to other forms of intellectual property as well. In that regard, something the committee may want to look at is the recent research strategy released by ITK, the Inuit representative group, which really addresses these issues in greater detail. It may be a group that would be interested in appearing before the committee.

The whole reconciliation project is not one of months or years or even decades. It's interesting that at the very start of this conversation you're having today, you're bringing the indigenous conversation to the table. I think that's a very valuable addition.

Mr. Terry Sheehan: I appreciate that very much. Thank you.

For the Canadian Federation of Students, we've been talking about some history here. On April 10, 2013, Adam Awad, then national chairperson of the Canadian Federation of Students, referred to Access Copyright's legal proceedings against York University as a "desperate attempt to wrangle public institutions" into obsolete licensing agreements that ignored the breadth of fair dealing.

I have a few questions around that. First, what changes would the Canadian Federation of Students want to see to Canada's collective licensing regime?

Ms. Charlotte Kiddell: First and foremost, I would say that the Canadian Federation of Students recognizes that the copyright regime we have at present is very strong. We are interested in pursuing some of these reforms that you've just brought up in terms of better protecting indigenous ownership of intellectual property and protecting indigenous knowledge.

I know as well that there are concerns with current crown ownership under copyright law, but I think that, first and foremost, what students want to affirm for this committee is that the current system is working well, and we do think that this is a strong system for protecting students' access to knowledge and information.

Mr. Terry Sheehan: Thank you.

Is my time up? All right.

The Chair: We'll move to Mr. Lloyd.

You have five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Chair. I'd like to start by saying I'm going to be splitting my time with my colleague.

I think I'm probably one of the few people on this committee—I can't speak for Matt—who's probably still paying off their student loans. That being said, with my recent experience graduating in 2014, one thing that was really useful to me when I went to university was the textbook tax credit that had been implemented by the previous government.

I'll just ask for a comment from the Canadian Federation of Students on the impact of losing the textbook tax credit in a recent budget.

● (1610)

Ms. Charlotte Kiddell: The Canadian Federation of Students advocates for a model of student assistance that is based on upfront needs-based grants rather than tax credits, because we find that tax credits that come after an education disproportionately benefit those who have the most money to spend on a post-secondary education and need that assistance the least.

However, I do understand that that's not what the committee is studying here today. Certainly, if you'd like to discuss some of our recommendations on increasing the accessibility of post-secondary education, I'd be happy to do that. I will say that fair dealing is absolutely a small but very important piece of increasing students' access to post-secondary education.

Mr. Dane Lloyd: Absolutely. I just considered it because in this document that we received, textbook costs have such a significant impact on students, so as part of the market of supply and demand, any sort of thing helps in creating the demand for students if they can afford it.

My next question is more for Universities Canada, for Mr. Davidson.

What sort of future do you envision if copyright modernization goes the way that you're looking for? How do you see that compensating creators in that sort of environment?

Mr. Paul Davidson: When I made my preliminary remarks, I reaffirmed the value of the changes that were made in 2012 by the previous Parliament and by the subsequent court proceedings that have been interpreting that legislation, and we would encourage the committee to allow the courts to continue to do their work.

The key issue as you embark on this study is to find the appropriate balance. That is a hard one to find. I acknowledge that. I think universities, as both users and creators, have an appreciation for the challenge of that. As I was commenting in my remarks, universities are also centres of creative energy, of creative culture, of a dynamic cultural sector, and so we want to make sure that creators are appropriately compensated. We want to make sure that users are not paying more than once for works that they have rights to use. We want to make sure that students can exercise their rights to use works. We want to make sure that researchers have rights to use works to do their research. But it is a question of balance.

Mr. Dane Lloyd: Thank you.

How much time do I have left, Chair?

The Chair: You a minute and 45 seconds.

Mr. Dane Lloyd: Go ahead.

Mr. Matt Jeneroux: Thank you.

If anything, I'll just get it on the record that my wife is a physician, so I too am also paying fees—

Voices: Oh, oh!

Mr. Matt Jeneroux: —proxy through her.

If we come back a little bit to the first line of questioning, Mr. Davidson, on the publicly funded research being made public, is it your opinion that it should also apply to all recipients of public funds, those within the private sector as well?

Mr. Paul Davidson: To be honest, we don't have a view on that explicitly. Again, we are active participants in the work that you're doing to try to assess what makes most sense in an evolving landscape.

Mr. Matt Jeneroux: Okay. Great.

Could you quickly expand on some of the court cases you referred to as they're making their way through the court and what type of legislative changes you'd like to see specifically in reference to those cases?

Mr. Paul Davidson: I should say at the outset that we are seeking leave to be intervenors in one case that's being considered, and that's the York case, so I want to be very careful that we don't comment explicitly about that.

Again, to come back to the point of the previous committee in the previous Parliament, I think there were three ministers involved. There were three rounds of consultations to get the Copyright Modernization Act to its current state in 2012. That was a massive undertaking, and we believe it struck a fair balance. It struck a correct balance. To be upsetting that apple cart as universities are investing in compliance and as, frankly, rights holders are trying to develop new products and services, to dramatically change what we think is a fair balance right now, would not be in the public interest.

● (1615)

The Chair: Thank you very much.

Mr. Baylis, you have five minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Chair.

First, we heard about your increasing expenses vis-à-vis copyright. I think you said $370 million this year. By the same token and on the other side of the coin, we're hearing a lot from small Canadian publishers who are coming to us and saying they've seen a radical drop-off. Where's the money going? You're paying more and they're not getting any. They're not satisfied. What's happening?

Mr. Paul Davidson: It's a fair question, and it's something I have great sympathy for. The public policy tools that were developed in the 1960s and 1970s to create a vibrant Canadian culture were extremely effective. I think the real public policy challenge is this: how do we ensure that we have new public policy tools that respond to the new reality to ensure that Canadian stories can be told far and wide? I think the Canadian cultural policy review that looked at export opportunities is something that bears further scrutiny.

In direct answer to your question, about 92% of library holdings are created by academics. The content is created by academics. They're not created by the small Canadian publishers. They're not created by the literary authors. I think there are other vehicles to address the needs of small presses and so on.

Mr. Frank Baylis: Yes, I get that, but let's go just to the point.

Mr. Paul Davidson: Yes.

Mr. Frank Baylis: They said that since fair dealing has come in, they've seen a radical drop-off in their income. On the other hand, you say we're paying more and more and more. Where is your money going? You're not giving them the money. It has got to be going somewhere else if you're paying more. Correct?

Mr. Paul Davidson: Yes.

Mr. Frank Baylis: Where is that money going?

Mr. Paul Davidson: The money is going to a variety of intellectual property from a variety of sources, international publishers, international rights holders, and other sources—

Mr. Frank Baylis: This is your chance to talk to us, because they're going to be talking to us and telling us that you should be clamped down in fair dealing. We need to address their concerns. It's not working for them. Unless they're misleading me or whatever, they're saying that they're seeing the point of even bankruptcy. So we need to know.

You mentioned monopolies in publications, and I think Ms. Kiddell mentioned open source. Where is the money going if it's not going to our Canadian small businesses?

Mr. Paul Davidson: Intellectual property is being purchased in record amounts by Canadian universities through other publishers, through other sources of content providers. That's the best answer I can provide you. It's not that....

Mr. Frank Baylis: Do you know how much more you would be paying if in 2012 the fair dealing hadn't come in?

Mr. Paul Davidson: Again, I think some are trying to establish causation by correlation. We're living in a disruptive world. Look at how the taxi industry has changed over the last five years. Look at how other sectors are roiling because of disruptive change. I think there are all sorts of public policy measures and mechanisms that can be used to support small Canadian publishers and small Canadian authors, but fair dealing is not the approach. It's using the wrong tool.

Mr. Frank Baylis: Fair enough. They've come to us, or companies have come to me, on this concept.

I want to touch on the point you had about it going through the court system. I think you were referring to Access Copyright v. York. To my understanding—I've only read summaries of it—York lost, and it was said that they're abusing fair dealing in not paying these publishers. But then in your testimony you said let it go through the courts. I know it's being appealed. Is it your feeling that if it's appealed to the Supreme Court they will reverse what the Federal Court did?

Mr. Paul Davidson: There are a number of proceedings under way. York is one of them. We are a potential intervenor on that, so I want to be cautious about commenting on specifics in that case. What I will draw your attention to is the ruling of the Federal Court a year ago, and as recently as four weeks ago, that strongly upheld the principles of fair dealing for educational purposes.

So there are a number of court cases under way, and—

Mr. Frank Baylis: In that sense, in the end it comes down to what's fair: I have written a book, and you're using a chapter of the book. If there are only two chapters in the book, you're using 50%. If there are 10, chapters you're using 10%.

I'll ask both of you, but starting with you, Ms. Kiddell, what in your world view would be fair dealing in, say, taking a book and taking a section of the book and not paying for it? What would be fair in your world view and in the view of the students?

Ms. Charlotte Kiddell: As I said, I think the current fair dealing provisions under the copyright law are very strong, but I actually want to address what you were bringing up earlier in terms of concerns from the small publishing industry about declines in profits being associated with fair dealing.

I would absolutely echo the statement that that's a matter of correlation and not causation. I think there's strong evidence for this, because internationally, profits and income in terms of content creators and small independent publishers are on the decline, and that's not because of fair dealing. That's happening in many countries without fair dealing for the education sector. I would say that's much more attached to in fact a global trend of stagnant and declining profits and wages.

I think both Mr. Davidson and I have affirmed that there is a strong role for the government to play in funding arts and culture. In fact, I, as a person who represents students who are aspiring content creators, many of whom are already content creators themselves, am very concerned about lack of income for content creators. But government investment in arts and culture for this country ought to come through direct government funding for arts and culture and not through subsidizing that through the education sector and mostly on the backs of students.

● (1620)

The Chair: Thank you.

We're going to move back to Mr. Jeneroux.

Mr. Matt Jeneroux: Thank you, Mr. Chair.

There's a copyright law expert from Osgoode, Professor Vaver. He expressed a concern that clarity in terms of the exact meaning of fair dealing has been left up to the courts, given the ambiguity of its definition in the Copyright Act.

Do you believe copyright should be updated to provide a clearer definition of fair dealing, or should the responsibility be left to the courts?

Mr. Paul Davidson: Let me jump in and say that, first of all, fair dealing is a right that has existed for decades. Fair dealing for education was made explicit just five years ago in a series of five decisions by the Supreme Court of Canada. So this is complex law that needs to be determined.

There are a variety of approaches to addressing fair dealing. Some advocate very clear definitions of bright lines; others have different views. I think you're at the start of a very long process where you're going to hear a lot of conflicting testimony, and you have a really big task in front of you.

I believe the act in 2012 struck an appropriate balance. We have a set of guidelines that our sector is using that is, in my view, concurrent with the legislation, and that is being tested in the courts right now.

Mr. Matt Jeneroux: Do you want to get on record?

Ms. Charlotte Kiddell: I would concur.

Mr. Matt Jeneroux: Okay. Great.

How would you assess the value and impact of collective licensing agreements proposed by Access Copyright and Copibec, since 2010, on students, teachers, and copyright holders?

Ms. Charlotte Kiddell: Go ahead.

Mr. Paul Davidson: I think Access Copyright was a creative solution in a different century. It has a product that is not meeting the needs of students. It has a product that's not meeting the needs of institutions. Institutions have made efforts to encourage them to be more market-oriented and work with one of their largest customers in a period of disruption. Instead of that, we've had continual litigation.

The experience that Canadian universities have had with the copyright agencies has not been universally positive. What we strive to do is make sure that creators are appropriately compensated, that users are able to exercise their rights in a way that's fair and balanced.

Mr. Matt Jeneroux: Do you concur?

Ms. Charlotte Kiddell: I do. As I spoke about in my remarks, trends we've seen within the academic community are opting towards more open models of accessing information that result in content creators being able to produce information and provide that information directly to the academic community in lieu of being forced to sell it to large corporate content owners and buy it back to access it at inflated prices. It shows that the priority of the education community is very much on being able to exchange and access information in a way that allows for dynamic sharing of multiple forms of learning materials, multiple media, and a diversity of sources, which is absolutely in the best interest of researchers and educators, and ultimately of students.

The Chair: Thank you very much.

Mr. Jowhari, you have five minutes.

● (1625)

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you.

Thank you to the witnesses for coming in today.

I'm going to echo back some of the numbers I heard and try to come back to my colleague Mr. Baylis' question in a different way.

I heard about a billion-dollar investment over three years, and about $370 million this year. I heard that we have made the transition to about 20% print and 80% digital. I also heard that over 90% of the knowledge that's there is being generated by academia.

When it comes to fair dealing, with regard to a lot of the content that's being used, is it by that 20% hard copy that's been published, or is it a portion coming from the digital knowledge that's there? Are they correlated? I'm trying to get into really bringing a balance between fair dealing between the user and the creator and also figuring out how the students fit into this fair dealing. Could you shed some light on that one? How does this fair dealing factor into your tuition, basically?

Ms. Charlotte Kiddell: I am a little bit confused about your question, but I would say that fair dealing allows students to access a greater diversity of sources in terms of professors being able to bring sources outside traditional learning material into the classroom to supplement textbooks and what have you.

Mr. Majid Jowhari: And the universities pay for that.

Ms. Charlotte Kiddell: That's allowed for under university licensing agreements.

Mr. Majid Jowhari: Going back to the universities, you've given us the amount of the investment that's been made—$1 billion over two years, $370 million—and where the sources are, and there is still the discrepancy between the creators saying their revenue is dropping, and you are spending more money.

Coming back to my colleague's question, where is that money going, in your opinion?

Ms. Charlotte Kiddell: I would first affirm that content creators worldwide are seeing a decline in income, and that is in countries with and without fair dealing. This is a global trend—decreased wages, stagnant wages, decreased public funding in arts and culture. That's outside fair dealing and spending trends in the education sector, which, as Mr. Davidson has affirmed, are on the rise.

Do you want to comment further?

Mr. Paul Davidson: Sure.

One of the critiques made in particular by Access Copyright is that their revenues are declining and therefore universities must not be paying. Universities have other sources to legally buy intellectual property, whether it's other copyright collectives, clearance centres—

Mr. Majid Jowhari: And this is an opportunity for you to tell us where the other sources are so that we can get educated on that.

Mr. Paul Davidson: Sure. I might refer you to the Canadian Association of Research Libraries, who I believe made a request to appear before you, and who can describe the multi-million dollar licences they negotiate on behalf of a consortium of universities to ensure that researchers and students have the most updated research and information available at their fingertips and that the creators are appropriately compensated.

Mr. Majid Jowhari: Okay.

You also touched on the Copyright Board. With about a minute left here, what would you change on the Copyright Board, if you were going to change one thing to help them?

Mr. Paul Davidson: We did make a submission through the consultation process that was under way where we talked about timely renewal of board members, full staffing of the board, and improving the resources available for the board to do its work. Those are two or three suggestions right off the top, and I'd be happy to send you the copy of our submission.

Mr. Majid Jowhari: Okay. Thank you.

The Chair: Thank you.

For the final two minutes we have Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

I think one of the challenges we have with the creators is that if we do something different from right now, turning over compensation to the universities and organizations independent from Parliament, it's going to be highly complicated to see that followed through for real results.

You mentioned that more money than ever has been spent on materials, but the vehicles you now use to access that information appear to have changed from the past. Is that where the discussion is? They're asking on the other side about where the money is going. To be quite clear, though, you're spending more money; it's just going to different avenues than traditionally it has in the past. Is that correct?

● (1630)

Mr. Paul Davidson: It's part of the digital disruption of an evolving landscape; it's about the needs of students to be able to access different materials; and it's about the ability, in the case of Canadian independent publishers, to produce materials that are relevant and important to the research work of universities.

Again, I have sympathy for the small independent publishers. I have sympathy for the creators. But I think a fair dealing approach is the wrong tool. There are other mechanisms, like the public lending right, like the aid to publishing, like other Department of Canadian Heritage issues. To suggest that fair dealing is the reason for the current state of Canadian publishing is misplaced.

Mr. Brian Masse: Yes: I'm just not sure whether the supposed salvation would be just getting rid of fair dealing for them anyway. That's what I worry about.

Mr. Paul Davidson: Respectfully, fair dealing is a right that's existed for decades. Fair dealing is a right that's been extended to the education sector not only by Parliament but by the Supreme Court in five significant rulings in 2012. I can't imagine members of Parliament suggesting that they negotiate away other kinds of rights because these are just rights; we can just negotiate away rights.

This is the anniversary of the Charter of Rights and Freedoms. Are we just going to negotiate away our rights and freedoms?

Mr. Brian Masse: Last, for students, has there been any measurement, or is there any way to measure if something changes with regard to copyright under these discussions here—the increased potential cost or reduction in cost if a new system or regime is put in place? Is that too complicated, or is that something perhaps we should put on the government? Should it change legislation, perhaps part of that legislative change should be some type of measurement for the costs of students for changing copyright.

The Chair: Speak very briefly, please.

Ms. Charlotte Kiddell: Briefly, focusing too much on cost savings as part of fair dealing really misses the main point, which is that fair dealing enables students to access a diversity of learning materials in—

Mr. Brian Masse: That's not the question. The question is this. If there is a change and it incurs a difference in the cost situation, should that be part of the decision if a change takes place, so there can be real measurement for the costs to students later?

Ms. Charlotte Kiddell: I'm confused about how you're working the cost of tuition in with cost of learning materials and what have you.

Mr. Brian Masse: Well, we can follow up, but you're arguing it's costing more if it changes, but that's what we're trying to find out. Is there is a true measurement about the costs to students related to copyright or not?

Ms. Charlotte Kiddell: The costs would be that students would be paying for any supplementary materials brought into the classroom or that they would be seeing a classroom environment with a much poorer diversity of materials, essentially.

The Chair: Thank you.

I'm afraid we're out of time for our first panel.

It's important to understand that, as committee members, if we can't get witnesses to say what they need to be saying on the record, then it doesn't enter into the report, so all manner of questions have to be asked and we don't want to assume anything. That is why this is so important. We know it will be complicated.

Thank you very much for coming in. We're going to suspend for a very quick two minutes to get the next panel in.

● (1630)

(Pause)

● (1635)

The Chair: Can I get everybody back? We're on a tight timetable. Welcome back, everybody.

For the second portion of this, we have, from the Canadian Association of University Teachers, Pamela Foster, director of research and political action; and Mr. Paul Jones, education officer.

From Campus Stores Canada, we have Shawn Gilbertson, manager of course materials for the University of Waterloo.

I'm sure you sat down and watched the beginning of the proceedings. The name of the game is to get stuff on record. That's how we'll be able to present a good report.

We're going to start right off with Mr. Jones. You have five minutes.

Mr. Paul Jones (Education Officer, Canadian Association of University Teachers): Thank you. My name is Paul Jones, and I'm with the Canadian Association of University Teachers, CAUT. I'm joined by my colleague, Pam Foster. We would like to begin by thanking the committee for presenting us with the opportunity to appear before you.

CAUT represents 70,000 professors and librarians at 122 colleges and universities across Canada. Our members are writers, creating tens of thousands of articles, books, and other works every year. We understand the importance of authors' rights, and as a labour organization have succeeded in protecting these rights through the collective bargaining process.

Our members are also teachers and librarians, whose success depends on making information available to others. In these capacities, they have been at the forefront of implementing new ways to create and share knowledge with each other, with students, and with the public at large. The dual nature of our membership has taught us that copyright should serve all Canadians equally. It is in respect to the need for the act to serve all Canadians that we raise our first issue.

In their letter to this committee, the Honourable Navdeep Bains and Melanie Joly stated:

> During your hearings and deliberations, we invite you to pay special attention to the needs and interests of Indigenous peoples as part of Canada's cross-cutting efforts at reconciliation.

This is something we wish to address. From indigenous communities, CAUT has heard first-hand of the damage caused by the appropriation of their cultural heritage, and of the failure of the Copyright Act to provide protection.

In fact, we know of one provision in the act directly responsible for the loss of a community's stories. Indigenous elders and scholars are working to address this broader issue, as are dedicated experts within the public service of Canada. We encourage the committee to support these efforts, and ensure that the Copyright Act recognizes indigenous control over their traditional and living knowledge.

The other issue we wish to address this afternoon is fair dealing. Not that long ago, the Copyright Act's purpose was seen as primarily benefiting the owners of literary and artistic works. This has changed with the Supreme Court's 2002 decision in Théberge v. Galerie d'Art du Petit Champlain inc., which was an important turning point.

In that decision, the court said:

> The proper balance among these and other public policy objectives lies not only in recognizing the creator's rights but in giving due weight to their limited nature. In crassly economic terms it would be as inefficient to overcompensate artists and authors for the right of reproduction as it would be self-defeating to undercompensate them.

This idea of balance was expanded in a series of more recent Supreme Court decisions, and it was affirmed by Parliament in the 2012 Copyright Modernization Act.

This approach, in which user rights and owner rights are given equal weight, has accompanied enormous innovation in the way knowledge is created and shared. Librarians and professors have been at the forefront of the open access movement and the open education resource movement, in which the journal articles and textbooks they write are made freely available to the online world.

Fair dealing has been a small but important part of this innovation, allowing students, teachers, and researchers to easily exchange material in a timely fashion. For example, it would allow a class to quickly share a controversial newspaper editorial, an excerpt from a movie, or a chapter from a rare, out-of-print book. The recognition of fair dealing for educational purposes by the Supreme Court and by Parliament has been of benefit to Canada.

Now, as I'm sure you are aware, not everyone is happy with fair dealing. There are two things you will hear or will have already heard. First, you will hear that poets and storytellers in Canada are often struggling at or near the poverty line. This is absolutely true. Second you will hear that fair dealing is in part responsible for this. This is not true.

The impoverishment of large sections of our artistic community far predates educational fair dealing. It is also a sad fact across the globe, including in jurisdictions where educational fair dealing does not exist. The reality is that fair dealing covers a small amount of content use on campuses, of which an even smaller fraction is literary works by Canadian authors. In fact, when it comes to supporting authors and publishers, Canada's post-secondary education sector has a proud record to point to.

Yes, we are developing new ways to create and share information, and it is true that in the last 10 years there has been enormous disruption in the world economy, with more losers than winners in all sectors, but we in the post-secondary sector continue to spend hundreds of millions of dollars per year on content.

To conclude, we urge the committee to affirm the Copyright Act as legislation for all Canadians by addressing the concerns of indigenous communities and by supporting a public post-secondary education sector where a combination of open access journals, open education resources, fair dealing, and hundreds of millions of dollars spent annually on content provides the best possible learning and research environment.

Thank you again for inviting us, and thank you for the important work that you're doing.

● (1640)

The Chair: Thank you very much.

We're going to move to Mr. Shawn Gilbertson from Campus Stores Canada.

You have five minutes, sir.

Mr. Shawn Gilbertson (Manager, Course Materials, University of Waterloo, Campus Stores Canada): Thank you, Chair.

Good afternoon. I'd like to thank the committee for the opportunity to appear before you today. My name is Shawn Gilbertson. I'm the course materials manager at the University of Waterloo. I'm here today on behalf of Campus Stores Canada, the national trade association of institutionally owned and operated campus stores. Campus Stores Canada has 80 member stores and more than 150 vendor and supplier associates nationwide. This means that, if you know one of the million or so post-secondary students, you probably know someone who is served by a member of Campus Stores Canada.

Campus stores serve students by ensuring they have access to high-quality learning resources by acting as a conduit for the distribution and fulfillment of print and digital course material. We are here today with a simple message. Fair dealing has not negatively impacted the sale and distribution of academic material in Canada. The 2012 expansion of fair dealing to include educational use as an exemption is an important clarification of user rights. Importantly, this review must be considered within the context of a rapidly evolving marketplace.

To be clear, the higher education publishing market has seen a significant shift away from traditional print-based mediums towards digital learning products often sold at lower prices. This might clarify some of the questions asked earlier. Further disruption is a result of changes in consumer behaviour, provincial policy changes, and a competitive online marketplace. These changes are part of an industry faced with increased competition and more choice for consumers in the way they purchase, access, and consume course material.

However, I should note that unaffordable prices of some course material has led to decreased demand for expensive textbooks that may have only been slightly updated. In addition, there has been significant market saturation of print learning material with increased competition through the growth of textbook rentals, imported international editions, peer-to-peer selling, and increased demand for less expensive older editions.

Students, the ultimate users of learning materials, no longer see the value in expensive, single-use texts. As with other industries like music and video, user expectations of value have shifted. New channels, new business models, and new market entrants are further perpetuating the disruption of traditional print revenues, fostering the investment and development of digital products and subscription-based services, with early indicators pointing to significant growth.

With that said, we would like to underscore an important point from the joint ministers responsible for copyright when they stated in a letter to this committee that "...the Copyright Act itself might not be the most effective tool to address all of the concerns stemming from recent disruptions..." Campus Stores Canada encourages the committee to keep this top of mind when reviewing briefs and listening to testimonies from creators and copyright owners.

To conclude, it is imperative that this committee recognize the important balance between creators and users of intellectual property and the value of fair dealing. Fair dealing remains a fundamental right necessary to safeguard creator and user interests as this industry innovates and evolves.

On behalf of Campus Stores Canada and the students we serve, thank you for the opportunity to speak to you today.

● (1645)

The Chair: Thank you very much.

We are going to go right into questions.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan: Thank you very much.

Those were great presentations.

Earlier on, I asked about how the government, this committee, could make recommendations to better address the long-standing issue of indigenous concerns over copyrighting.

Paul, I know in your remarks you just made a statement about that. Again, I don't know if you were here, but in Sault Ste. Marie we have a number of indigenous activities going on relating to truth and reconciliation and the building of initiatives at the Discovery Centre. The infrastructure is being built right now and is going to work with Algoma University, which is also a site that was a former residential school.

They are really trying to address the issue of indigenous education, so they're involved with it, but they're also helping address the truth and reconciliation recommendations. Part of that is that they are going to be housing a lot of artifacts. There are going to be a lot of teachings, and there are concerns about indigenous copyrighting in Canada.

Would you be able to expand a little further about your views or your organization's views on how Canada can better protect indigenous teachings and cultural artifacts, etc. in the institutions through better copyright legislation?

Mr. Paul Jones: The first thing I should clarify is that we take our knowledge from our indigenous members—indigenous academic staff—who have explained the problems to us. We are trying to convey that along, but they will be the main spokespeople on this and will bring forward the concerns more directly. I would not want to appear to be pre-empting that or speaking on behalf of another community.

We have learned that western notions of intellectual property set out in the Copyright Act or the Patent Act, with very precise definitions of individual or corporate ownership and very precise timelines for the creation of knowledge and how long that knowledge lasts, do not fit at all well with the different kinds of indigenous knowledge systems that exist within aboriginal communities. The mix between those two things—our Copyright Act and traditional approaches to indigenous knowledge—is very difficult.

One particular example that came to our attention was that of a historian in New Brunswick who, in the seventies, recorded stories of elders. When the community wanted to access those stories, recordings, and transcripts, they were not able to, because copyright ownership in those stories was claimed by the person who had made the recordings. It's now section 18 of the act, I think, that gives those rights to the recordist. In this case, the community was not able to access the stories. The elders who had told the stories had died. Most of their children had died. It is just now that they have finally broken through and been able to publish these stories.

That was a specific example of one small part of the act, which in that instance caused real damage to that community, real sorrow and heartbreak. I believe that same situation has happened in other places.

There are other situations where, because the copyright requires a specific creator—someone to claim ownership—and a specific timeline, it doesn't fit well with notions of community ownership or with notions of ownership since time immemorial, going back and going forward.

We would not purport to say exactly what has to be done. We know there are experts and elders within indigenous communities who can speak to this. We just want to put our support behind them in making the changes necessary to protect indigenous knowledge.

● (1650)

Mr. Terry Sheehan: Thank you for that, Paul.

We wanted to make sure we got that on the table right away. This is the first meeting of this copyright study, so to both sets of witnesses, I really appreciate your contribution to that important discussion we'll have later.

For Shawn, what is the position of Campus Stores Canada on the current litigation between collective societies and Canadian universities? Can you delve into that?

Mr. Shawn Gilbertson: I can only speak to the role that Campus Stores Canada played prior to 2012. Campus Stores Canada is responsible for course pack printing. My understanding is that about 75% of the revenues came from that previous licensing arrangement. As we understand it, there are two parts to that licensing arrangement, one that was a blanket FTE fee that covered all incidental copying, and then 10¢ per page for print course packs.

One of the key differentiators we've seen leading up to 2012 and since is a shift to e-reserve use, because of the increase in expenditures in library licensing. Needless to say, there is less of a need for that type of licensing scheme when students would otherwise be paying twice for that course material.

The Chair: Thank you very much.

We're going to move to Monsieur Bernier.

[*Translation*]

You have five minutes.

Hon. Maxime Bernier (Beauce, CPC): Thank you very much.

My question is for Mr. Gilbertson.

[*English*]

Thank you very much for being with us.

I want to know in a bit more detail what your members are doing to respect the law right now.

Also, what would be the impact on their activities if they wanted to promote their rights? Can you just answer the first part?

Mr. Shawn Gilbertson: I probably can't speak more broadly on the education sector.

Certainly, Campus Stores Canada is involved in the sale and distribution of course material, not necessarily copyright enforcement. However, we have individuals who are part of our staff and who have expertise in copyright licensing. For example, we still adhere to the transactional licensing required for various permitted uses, those that exceed fair dealing exceptions.

Does that help answer your question?

Hon. Maxime Bernier: What is the big change that we must make for the renewal of this legislation? If you have only one recommendation, what would be your recommendation?

Mr. Shawn Gilbertson: It's simply not to address fair dealing. There's no reason to change the current law.

Hon. Maxime Bernier: Okay, thank you.

I have another question for Mr. Jones.

How can we ensure that a university professor would be able to respect that legislation and at the same time also their right to be protected? With the legislation that we have in front of us, what is the biggest concern of the university professors?

Mr. Paul Jones: You've asked for one concern, and we have five issues we want to bring forward—our five biggest concerns. The first one is to leave fair dealing alone. You know that. We're also very concerned, as in our opening statement, that the concerns of indigenous communities are addressed in the act. Beyond that, the current term is life plus 50, and that's a reasonable approach. To the extent that this can be protected in national legislation, what with international trade agreements starting to infringe on that, we urge that it remain at life plus 50.

The Copyright Modernization Act of 2012 did a good job of moving a lot of things forward. One area where it didn't quite succeed was on the issue of technological protection measures. In particular, a small, but elegant change there that would allow digital locks to be broken for non-infringement purposes.... If there are reasons that you can legally reproduce something, but it's in a digital format and it's protected, you should be able to still go in and do that.

The other issue that we were interested in talking about further, and we'll develop this in our submission, is the issue of crown copyright, which we would want to see loosened, to be moved back to allow Canadians better access to the information that the government produces, ultimately with a goal perhaps of abolishing it, but with some baby steps along the way to move that forward.

● (1655)

Hon. Maxime Bernier: Thank you.

The Chair: Mr. Masse, you have five minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

I am going to touch on the digital locks. Give us an example as to what is taking place, and where that can be problematic. I think that's an important part of the previous review that took place that seems to be getting eclipsed in terms of its understanding of the repercussions. Can you perhaps give us a bit of an example?

Mr. Paul Jones: I will try to give an example, and it's an old example already. Let's say a professor is looking to present a class on the presentation of professors in popular culture or the presentation of politicians in popular culture, and they want to show some clips from a DVD or a video, or some kind of streaming mechanism. It may be that they have to break into that in order to copy those clips. Let's say it's a two-hour movie and they want to show two minutes of it. It may not even reach the threshold of fair dealing. It may be an insubstantial use, so it's perfectly legal to do that in terms of what the Copyright Act says, but because you're not allowed to break digital locks, it would be an infringing activity.

Mr. Brian Masse: It's a small segment, as you mentioned, and part of it's a practical application. It wouldn't be necessarily that the artists would have an objection to it. It would be the encumbrance to try to find the producer of the lock, the material, and so forth, in terms of trying to get that access. Is that correct?

Mr. Paul Jones: Yes, that's correct. I think one of the advantages of fair dealing is it allows quick and ready access to materials to present in the classroom.

Mr. Brian Masse: Yes.

Mr. Gilbertson, in terms of fair dealing, what has changed? Give us a snapshot from a student's perspective in the last five years in terms in bookstores. There's a lot that's taken place in general. You mentioned something. I think it was the quote. I had to write it down because you said, "no longer see the value in". I was going to say that I didn't see value in that in 1991 when one chapter was changed in a textbook, and you missed out on those who were selling them beforehand, and so forth.

Perhaps you can give us a little more insight into what's changed in the last five years.

Mr. Shawn Gilbertson: My understanding over the last half-decade or so is that we have seen a significant shift from traditional print-based products to born digital learning products tied to assessment. This is where we've seen the lion's share of investments from large multinational publishers. Certainly, we represent a specific digital intermediary channel where we've seen approximately $50 million since inception in total cumulative sales.

When this type of product is tied to assessment, students are essentially forced to pay. They don't necessarily have an option to share a book or to use a copy from the library, as an example. In the province of Ontario, we have seen some change in policy that allows the use of these particular products as long as institutions have clear guidelines or policies in place that protect student interests.

Mr. Brian Masse: Has there been more of a movement towards maybe some more individual agreements with regard to the use of resources, materials, and so forth? Is that happening more often, or is it still a blanket policy? Do you now have different products in the university bookstores that might have more variance in independent decision about the usage policies?

Mr. Shawn Gilbertson: To answer your question simply, I'll just draw on a question from earlier this afternoon.

Cengage Learning just released a product that allows students to access the entire repertoire within their catalogue. That comes at a cost per term or per year. We are seeing some early signs of changes similar to other content industries where content is ubiquitous. Users pay a nominal price, and they get access to way more content than they otherwise would.

● (1700)

The Chair: Thank you.

We're going to move to Mr. Baylis. You have five minutes.

Mr. Frank Baylis: Thank you.

You both reflected back a similar point that was made by the previous witnesses, which is to leave fair dealings alone, recognizing at the same time that authors and small publishers are making less money.

Starting with you, Mr. Jones, you represent teachers. Some of them are the authors, let's say, and yet they're not unhappy with the fair dealings right now, if I understand. Is that correct?

Where's the flow of the money going? There's more and more money going somewhere, but it's not going to our creators, and it's not going to our small publishers.

Mr. Paul Jones: I heard that question earlier, and I thought about it. I have at least one answer, which is that $120 million per year goes to the CRKN, the Canada Research Knowledge Network. It is a consortium of universities that purchases a blanket licence to access digital material. Mostly, I think it is journal articles, but there are other things as well. That's an example of that shift to digital purchasing.

Mr. Frank Baylis: You mentioned this new movement towards open access, where authors are not putting it through a journal; they're putting it out there. Is that something that your association of teachers and professors is pushing? Can you elaborate on that aspect?

Mr. Paul Jones: This was a matter of some discussion within our membership. There wasn't unanimity at first, but a consensus has developed in support of open access. The genesis of it was a realization that our members, paid for by Canadian taxpayers, were producing vast amounts of literature, journal articles. They were transferring that to private sector publishers for free and often doing the editing and peer review work to ensure that it was up to scratch for free. Then, they were purchasing it back at the taxpayers' expense for huge amounts of money. Think of wage increases and inflation. The skyrocketing cost of these journals was just off the charts. Our folks have Ph.D.s, and there was a realization that maybe this wasn't the best way to go about this.

Mr. Frank Baylis: So the model was that we do all the work, we write it, we publish it, we even edit it. We give it to you, and then you charge us back for it, and we don't make any money on it.

Mr. Paul Jones: Yes, and this light bulb came on.

Mr. Frank Baylis: At first, they had that discussion in your group and they were not sure about this open access but then more and more people moved toward it because of this reality.

Mr. Paul Jones: Yes.

Mr. Frank Baylis: Mr. Gilbertson, you touched specifically on new ways. I think you talked about disruptive technologies and the way your students see value or don't see value.

Is this part of that movement? Are you seeing that? Is it flowing from the student's mindset about what's worth paying for or not?

Mr. Shawn Gilbertson: Yes, absolutely.

We're looking at some very new learning tools or technologies where students are paying out of pocket; they're nominal prices like, say, $20 per half credit, for example. One example that comes to mind is Learning Catalytics. It's similar to Cengage learning where the faculty member has access to the entire repertoire in the catalogue and students are paying $20 compared to a $200 textbook. I think this is where we are beginning to see the shifts in the way in which consumers or students value course material, and also, understanding that it is for a single half-credit course. Typically speaking, unless they are professionals, they tend not to hold on to them.

Mr. Frank Baylis: We've seen similar movements, say, with music, where, at one point, the younger generation was saying they had no issue with getting it for free. Music revenue was dropping and things like Spotify came on. They've turned and now people are saying they're willing to pay this monthly fee because it's a reasonable charge.

Is that the same type of thing that we're going to see in the education system? Is it happening?

Mr. Shawn Gilbertson: Yes, we're right at that tip right now, I believe. I should also state—not necessarily for this committee, but certainly for Canadian Heritage—that we are concerned about some of the emerging models to protect student pocketbooks. One of them in particular is books and tuition, that being digital course material that may be charged an ancillary fee and where students don't have any option to go elsewhere to purchase that material.

● (1705)

There is some real concern that ultimately we might see that bundled with tuition, and then we start to think about all the other policy changes that would have to take place at the federal level to accompany that. That is a concern for us.

The Chair: Thank you very much.

We're going to move to Mr. Lloyd. You have three minutes.

Mr. Dane Lloyd: Thank you, Mr. Chair.

My first question is for Mr. Jones and Mr. Gilbertson. Something that came out from the previous government in British Columbia was a little-known program called "creative commons". Unfortunately I never really had the opportunity to access that, because it came online just as I was graduating.

I was wondering if you could comment on the role of creative commons within the greater copyright issue.

Mr. Shawn Gilbertson: British Columbia in particular has started making investments in open educational resources that are tied to creative commons licensing. We've seen other provinces, particularly Ontario more recently, which just came online with its open textbook catalogue.

As they started to target first- and second-year level high-enrolment courses, we have started to see a shift away from traditional proprietary resources in that regard, toward closed copyright.

Mr. Paul Jones: I have a newspaper article here. The headline says that B.C. is to lead Canada in offering students free, open textbooks. It heralds the program there to work on open education resources. The date, interestingly, is October 16, 2012, so we see things that have changed over the last five years, in this case in the growth of open education resources.

We also know that at individual universities, this has saved students hundreds of thousands of dollars. Overall, in British Columbia, they're thinking $4 million or $5 million in the last few years of having free, open, accessible, online textbooks replacing costly versions from private publishers.

Mr. Dane Lloyd: Following up on this, how are the content creators compensated under the creative commons scheme? With the answer to that, is this a cost-effective way to provide resources to students but also to respect the rights of creators?

Mr. Paul Jones: I'll speak to the compensation. For some of the creators, these would be university professors and researchers. They earn a salary every year, and producing this stuff would be considered part of their work.

Mr. Dane Lloyd: It's included in their salary? When they put something on creative commons, they don't receive anything?

Mr. Paul Jones: There would be a multiplicity of different versions, but the core idea is that as part of their salary, university professors do this kind of writing and would volunteer to devote some of their time to these projects.

Mr. Dane Lloyd: Is there government funding that's going into this? That's not paying any of the creators; is that just basically for the set-up and providing of the program?

Mr. Shawn Gilbertson: It is going to pay for some of the creation of course material.

Mr. Dane Lloyd: Would you say, then, to answer the question, that it is a cost-effective way of providing resources?

Mr. Shawn Gilbertson: Yes. I suppose it depends on whose perspective we're looking at, right? Perhaps I'm going to comment on that today, but it is important that the committee review some of the recent developments in this case—the creation of open education resources.

The Chair: Thank you very much.

We're going to move to Mr. Longfield. You have three minutes.

Mr. Lloyd Longfield: Mr. Chair, a fast three minutes.

I'm going to open up with Mr. Gilbertson. It was good to hear you mentioning Cengage, because that is one of the game-changers we're facing.

The cost of books going into tuition is another model. As we look at possibly supporting tuition, we could also be supporting texts at the same time.

Two other pieces for me are the French-language open access journals, the *Érudit* journals, and looking at the model of digital learning products tied to assessments. That came up in conversations in Guelph as well.

There's policy needed around all of that. Could you comment on where the gaps are that we could be diving into in future discussions?

Mr. Shawn Gilbertson: I think at the provincial level, we don't necessarily have specific pricing floors or limits, but I do think that's something—you know, indexing to inflation—that will have to be explored at some point.

I probably can't speak to your first question on French-language open access journals. I'm not a content expert in that field of study.

I'll maybe pass it over to Paul.

● (1710)

Mr. Paul Jones: I don't have an answer for that either, but I can commit to finding out, because that's something we will be able to put our fingers on.

Mr. Lloyd Longfield: Thank you.

When we look at larger publishing houses out of the States supplying textbooks into Canada, I think it's important that we still get access to Canadian content, in both languages, as well as information that Canadian students need.

With the measure around protecting student copyright over works, students who are studying and contributing to creation of content, we're providing more money for students to be engaged in research. Whether there is some type of opportunity there for students to get relief on textbooks.... I'm not sure where I'm going with that, but the students are part of the equation. On research, they are part of the equation on having to access information.

Maybe this goes back to the comment by Mr. Baylis around creators not getting paid for content. Really, a lot of them aren't motivated to be paid for content; they want to be published.

Mr. Paul Jones: What your point hits on is that these are very disruptive times, and new methodologies, new approaches, are being tried all the time. What we want to see coming out of this review is that the environment, that ecosystem, is protected. When it's open access, open education resources, fair dealing, the knowledge networks, the site licences, the new approaches, what's the way to go?

Mr. Lloyd Longfield: Terrific, thank you very much.

The Chair: We're going to move to Mr. Jeneroux. You have three minutes.

Mr. Matt Jeneroux: Thank you all for being here today.

I have just one question for you. You've answered a lot of them.

This is similar to the question that I asked to Universities Canada in terms of the open access policy that stipulates that reports from grant-funded research must be made freely available to the public within 12 months after publishing.

I imagine it's mostly you, Mr. Jones, but you're welcome to weigh in on it as well, Mr. Gilbertson.

What is your assessment of that policy?

Mr. Paul Jones: Our organization supports open access and we support those policies, but we talked about the disruption and the dislocation that it's caused. Moving to an open access system was something new for our members. It was greeted with interest and some skepticism, and, as it's developed, people are moving to it more and more.

It's not without its problems. One is that the publishing systems are sometimes created by submission fees. If you want to get an article published, it may cost you $500 or $1000. We're looking for ways to bring that out of the grant money that professors get, and other sources, so that new scholars or people in areas where there's not a lot of grant support are still able to publish.

It's working well. We endorse and support it, but there are still some kinks to be worked out.

Mr. Matt Jeneroux: Do you think that should be expanded once again to all publicly funded research dollars?

Mr. Paul Jones: I think we would support the idea of making as widely available as possible that research knowledge for which the public has paid for the creation.

The Chair: Thank you very much.

For the final three minutes of the day, Mr. Graham.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): I want to keep going down the road that Mr. Jeneroux is going down. You brought up crown copyright earlier. I find it a fascinating topic that a lot of people have never heard of.

I would go one step further and ask, should publicly funded works be placed in the public domain?

Mr. Paul Jones: Yes, that would be the ultimate goal. That would be the direction that we would want to move towards.

I know there are some areas where there are issues of confidentiality that may restrict that immediate flow. There are also areas where there is revenue derived from the commercial sale of some material. Maybe things have to be worked out before that is placed immediately into the public domain or crown copyright is removed on those things. Overall, as a matter of principle, we would look towards moving away from crown copyright. I know that in the United States there's no equivalent of that.

● (1715)

Mr. David de Burgh Graham: With what would you replace crown copyright?

Mr. Paul Jones: Nothing.

Mr. David de Burgh Graham: Anything published by the government or belonging to the government would become public domain. Is that how you'd see it?

Mr. Paul Jones: That would be the ultimate direction to go, with some steps along the way.

Mr. David de Burgh Graham: How do you compare Canadian fair dealing with American fair use?

Mr. Paul Jones: My understanding is that fair use in the United States is actually a broader right than fair dealing in Canada, that it's not restricted by a purpose, and that it has fewer limitations overall.

Mr. David de Burgh Graham: You mentioned in your opening remarks that there's a specific section that interferes with indigenous rights. Can you tell me what section that is?

Mr. Paul Jones: I believe it's section 18 of the current act. At the time when the tapes were made, decades and decades ago, it may have been a different section.

It is a right that I think in some instances makes a lot of sense. The recordists would own and control the things that they record.

In this case, what it allowed was the appropriation of these stories, myths, and legends from this community, and so it wasn't an appropriate application of that rule. In terms of specific things to pinpoint, where indigenous concerns could be brought in, maybe it's that section 18.

Mr. David de Burgh Graham: Okay.

My final question is, for the record, what systems exist to oversee the proper use of fair dealing for professors, campus bookstores, and so forth? Does it run entirely on the honour system?

That question is for all of you.

Mr. Shawn Gilbertson: I can comment.

I do know that many institutions have set up copyright offices with expertise, and we heard Paul commenting on that earlier. Even within our own institutions, and specifically in campus stores, we adhere to what we call "fair dealing guidelines", which are implemented at each of our respective campuses. We operate within the interpretation of the act in fair dealing. Relying on the guidance of Universities Canada is how we operate.

Mr. David de Burgh Graham: Does anyone have any comment on that?

A voice: No, that's a good answer.

The Chair: On that note, thank you very much. Thus ends our first day of the copyright study.

I want to thank all of our panellists for coming today. We're going to suspend for a very quick two minutes. We need to do some committee business.

Thank you.

[*Proceedings continue in camera*]

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